IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 114 OF 2007

Rafique Ahmed Shaikh Budhan & Anr... Petitioners.
Versus
The State of Maharashtra & Ors. .... Respondents.

Mr.G.S.Godbole i/by Mr. R.D.Suryawanshi
for the Petitioners.
Mr. P. M. Patil, AGP for the State.
Mr. R. D. Rane for Respondent No.2.
Mr.S.M.Sabrad for Respondent No.3.
Mr. Nitin Dhumal for Respondent No.5.

CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

DATED : 4TH OCTOBER, 2007.

P.C.:

In this petition under Article 226 of the Constitution of India, the petitioners pray that the provisions of Section 4(9) of the Bombay Primary Education Act, 1947 as well as Rule 6(1) of the Bombay Primary Education Rules, 1949 be struck down as ultra virus the Constitution.

2. At the very outset, we may notice that the learned Counsel appearing for the petitioners has not been

able to argue as to how the said provisions would be ultra vires of any constitutional provisions or even the provisions of the principal Act. We may refer to the Section 4(9), which reads as under:

> "Except as otherwise provided in this Act, the term of office of the members of the school board shall cease on the expiry of the term of the electing authorized municipality:
>
> Provided that the term of office of such members shall not be deemed to expire by reason only of the fact the authorized municipality is dissolved or superseded."

3. It is argued that the above provisions give unfettered power to the State Government / Authority to appoint and/or not to appoint the members of the School Board and consequently rendering the period in the provision negative. We are unable to find any merits in this contention. The provision itself opens with the words "Except as otherwise provided in this Act", which clearly shows that this provision has to be operative in consonance and in conformity with the

other provisions of the Act and cannot be read in extract. Further more, in this writ petition, we cannot presume that the Authority concerned would not act or is not likely to act within the required period. Some discretion has been given to the Authority concerned and it is an expected norm of administrative functioning that all actions should be taken as contemplated under the law and within a reasonable time, where no specific time has been stated.

4. We do not find any reason to entertain this writ petition any further and the same is dismissed. However, petitioners can raise the plea in an appropriate case.

5. No order as to costs.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.